

REMARKS

This amendment is responsive to the prematurely *Final* Rejection of December 4, 2008. Reconsideration and allowance of claims 2-14 and 16-22 are requested.

**The Finality of the Office Action
of December 4, 2008 was Premature**

In the Office Action of June 3, 2008, the Examiner rejected claim 16 under 35 U.S.C. § 102 as being anticipated by either Shulze (US 6,893,396) or Khair (US 2002/0109621).

In Amendment B of August 29, 2008, independent claim 16 was *not* amended. Rather, the applicant requested reconsideration of the rejection of independent claim 16.

In the Office Action of December 4, 2008, the Examiner responded to the request for reconsideration of the rejection of claim 16 by withdrawing the prior rejections and making a new ground of rejection based on Mortara.

Because claim 16 was not amended, it is submitted that the citation of a new ground of rejection was not necessitated by Amendment B. Because the new ground of rejection applied against independent claim 16 was not necessitated by the applicant's response, it is submitted that the *Finality* of the December 4, 2008 Office Action is premature and should be withdrawn.

With the withdrawal of the *Finality* of the December 4, 2008 Office Action, the present amendment should be entered.

The Office Action

Claims 1, 3-13, 15, 16, 19, and 20 stand rejected under 35 U.S.C. § 102 over Mortara (US 5,704,351).

Claims 2, 14, and 17 stand rejected under 35 U.S.C. § 103 over Mortara in view of Schwarzberg (US 5,730,143).

Claim 18 does not stand rejected on art and is understood to contain allowable subject matter.

**The Claims Distinguish Patentably
Over the References of Record**

Mortara is directed to an EKG monitoring system in which the electrical impedance is measured in response to pushing the test button **30**. A high impedance is indicative of a poor electrical connection of an electrode to the patient. An extremely high or infinite impedance indicates that the electrode has become disconnected (**Mortara**, column 5, lines 8-17). In **Mortara**, the electrode impedance is not checked continuously. Rather, the impedance is checked in response to initiating an electrode check (**Mortara**, column 5, lines 28-43). **Mortara** makes no suggestion that one could or even can measure the electrical impedance while concurrently measuring EKG signals. Moreover, **Mortara** checks the impedance with an impedance measurement circuit and does not derive the electrical impedance from the EKG signals themselves.

Claim 11 has been placed in independent form including all of the subject matter of its parent claim and without further amendment, i.e., claim 11 has not been substantively amended.

Claim 11 calls for the quality of the measuring signals to be based on an evaluation of one or more of perfusion index, transmission level, interference level, and signal form. First, **Mortara** does not evaluate the EKG signal to determine resistance. Rather, **Mortara** determines the electrode impedance in a test procedure from a test signal. Moreover, **Mortara** makes no suggestion of testing electrode impedance based on perfusion index, transmission level, interference level, or signal form.

Accordingly, it is submitted that **claim 11 and claims 2-10 and 12 dependent therefrom** are not anticipated by **Mortara**.

Claim 13 has been rearranged into a more logical order and revised for greater clarity. **Mortara** does not disclose or fairly suggest that one could or should evaluate the measured physiological patient data in order to determine a quality of the measured physiological data. **Mortara** does not determine a quality of the measured EKG signals from the EKG signals themselves, nor does **Mortara** measure an impedance between the electrodes and the patient from the EKG signals.

Accordingly, it is submitted that **claim 13 and claims 14 and 22 dependent therefrom** are not anticipated by **Mortara**.

Regarding **claim 16**, Mortara does not disclose a means for determining a quality of measured medical data from the medical data itself. Mortara measures EKG data, but makes no suggestion of or an enabling disclosure as to how to determine electrode impedance from the EKG data.

Accordingly, it is submitted that **claim 16 and claims 17-21 dependent therefrom** are not anticipated by Mortara.

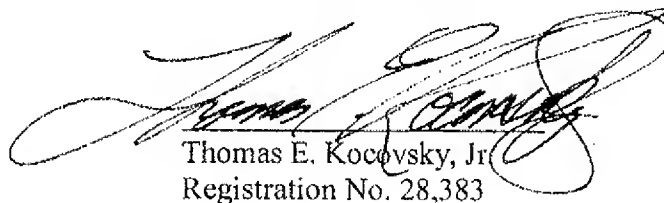
Claim 18 remains in condition for allowance. Claim 18, which does not stand rejected on art, has been narrowed by virtue of the narrowing amendment to its parent claim, but has not been broadened in any way. Because narrowing an already narrowed allowed claim does not render the allowed claim unpatentable, it is submitted that claim 18 remains patentable over the references of record.

CONCLUSION

For the reasons set forth above, it is submitted that claims 2-14 and 16-22 distinguish patentably over the references of record and meet all statutory requirements. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,



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